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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VINCENT SCOTT FIORENZA, JR., an
individual, on behalf of themselves and those
similarly situated;

Plaintiffs,

vs.

ALLIANT CAPITAL MANAGEMENT, LLC,
a New York limited liability company,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FAIR DEBT
COLLECTION PRACTICES ACT**

JURY DEMANDED

COMPLAINT

Plaintiff, VINCENT SCOTT FIORENZA, JR. (hereinafter referred to as "PLAINTIFF")
by and through undersigned attorney, alleges upon knowledge as to himself and his own acts,
and upon information and belief as to all other matters, brings this complaint against the above-
named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. PLAINTIFF brings this action on his own behalf and on the behalf of all others
similarly situated for actual and statutory damages arising from DEFENDANT's violations of

1 the Fair Debt Collection Practices Act (hereinafter referred to as the "FDCPA"), 15 U.S.C. §
2 1692, *et seq* and Nevada's Deceptive Trade Practices Act, NRS § 598, *et seq*.

3 JURISDICTION AND VENUE

4 1. The Court has jurisdiction over this action pursuant to the Fair Debt Collection
5 Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*. and 28 U.S.C. § 1331. The Court has
6 supplemental jurisdiction for the state law claims pursuant to 28 U.S.C. § 1367.
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8 2. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Plaintiff and Defendant
9 reside and/or do business in the District of Nevada. Venue is also proper in this District because
10 the acts and transactions that give rise to this action occurred, in substantial part, in the District of
11 Nevada.
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13 PARTIES

14 2. PLAINTIFF is a natural person residing in Las Vegas, Nevada.

15 3. PLAINTIFF is a "consumer" as defined in the FDCPA at 15 U.S.C. § 1692a(3).

16 4. PLAINTIFF allegedly owes a (past due) consumer debt as defined by 15 U.S.C.
17 § 1692a(5).
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19 5. ALLIANT CAPITAL MANAGEMENT, LLC (hereinafter referred to as
20 "DEFENDANT") is a New York limited liability company, the principal purpose of whose
21 business is the collection of debts.
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23 6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
24 regularly collects or attempts to collect consumer debts owed or due or asserted to be owed or
25 due another and that the DEFENDANT is a "debt collector" as defined by 15 U.S.C. §
26 1692a(6).
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STATEMENT OF FACTS

7. PLAINTIFF repeats, re-alleges, and incorporates by reference, paragraphs 1 through 8 inclusive, above.

8. On August 28, 2013, DEFENDANT, through its agent, Jim Neal, called PLAINTIFF, in an attempt to collect a consumer debt from PLAINTIFF allegedly owed to another.

9. DEFENDANT, through its agent, Jim Neal, left its first communication with PLAINTIFF, a scripted message, on PLAINTIFF's answering machine which states:

Hi this message is for Scott Fiorenza, Jr. My name is Jim Neal and I'm just calling regarding paperwork that was received here in my office attached to your name and social security number. I'd like you to be advised that I have a request to have you sign for a certified notice of a pending litigation regarding a claim being placed against you. Before I went ahead and stopped by your residence, I just want to provide you with a courtesy call to inform you that you're on my schedule for service. Should you have any questions or concerns, you do need to contact the payments office directly and their number is (877) 957-8122 claim 503295. To be as clear as possible, you are on my schedule for service no later than 5 pm August 30. Unless I hear differently I will be out to see you at that time. Scott Fiorenza Jr. you have been notified. Thank you.

10. DEFENDANT failed to notify PLAINTIFF that the call was from a debt collector in relation to the collection of a debt and that any information obtained would be used for that purpose, in order to trick PLAINTIFF into returning the call.

11. DEFENDANT falsely represented that it was going to serve PLAINTIFF with a certified notice of pending litigation when it had no true intention of doing so.

12. DEFENDANT also falsely represented litigation was pending against PLAINTIFF when DEFENDANT had no intention of filing a lawsuit and, as of the filing of this complaint, has closed PLAINTIFF's file.

13. DEFENDANT is not registered in Nevada as a debt collection company.

15. PLAINTIFF is informed and believes and therefore alleges that PLAINTIFF and the class members suffered emotional distress and may have also suffered damages in other ways and to other extents not presently known to PLAINTIFF, and not specified herein. PLAINTIFF reserves the right to assert additional facts and damages not referenced herein, and/or to present evidence of the same at the time of trial.

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17. These claims for relief are brought by PLAINTIFF individually and on behalf of the following classes :

- 4 -

1 b. Class Number Two: A class consisting of Nevada consumers who:

2 vi. Within three years prior to the filing of this action;

3 vii. Received a communication from DEFENDANT in connection with the
4 collection of a debt;

5 viii. When DEFENDANT was not registered as a debt collection company
6 in the state of Nevada.
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8 18. Under Federal Rule of Civil Procedure Rule 23, a class action is appropriate and
9 preferable in this case because:

10 a. DEFENDANT's agent, Jim Neal, along with the other debt collectors
11 working for DEFENDANT, use a form script that (1) intentionally fails to
12 notify PLAINTIFFS that the call was from a debt collector in relation to the
13 collection of a debt and that any information obtained would be used for that
14 purpose, in order to trick PLAINTIFFS into returning the call; that (2)
15 falsely represented it was going to serve PLAINTIFFS with a certified notice
16 of pending litigation when it had no true intention of doing so; and that (3)
17 falsely represented litigation was pending against PLAINTIFFS when
18 DEFENDANT had no intention of filing a lawsuit.
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20 b. Further, DEFENDANT was not a licensed debt collector in Nevada at the
21 time it was collecting debts in this state.
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23 c. There are questions of law and fact common to the class that predominate
24 over any questions affecting individual class members.

25 d. The only issue related to the individuals of class is the identification of the
26 individual consumers who received the scripted communication and Nevada
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1 consumers, a matter capable of ministerial determination from the
2 DEFENDANT'S records.

3 e. PLAINTIFF'S claims are typical of those of the class members. All are based
4 on the same facts and legal theories.

5 f. PLAINTIFF will fairly and adequately represent the class members' interests
6 and have retained counsel experienced in handling class actions and
7 collection abuse claims.
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9 19. A class action is superior for the fair and efficient adjudication of the class
10 members' claims as Congress specifically envisioned class actions as a principal means of
11 enforcing the FDCPA. *See* 15 U.S.C. § 1692k. The members of the class are generally
12 unsophisticated consumers, whose rights will not be vindicated in the absence of a class action.
13 Prosecution of separate actions by individual members of the classes would also create the risk
14 of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying
15 standards and would not be in the best interest of judicial economy.
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17 20. If facts are discovered to be appropriate, PLAINTIFF will seek to certify the
18 class under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

19 **FIRST CLAIM FOR RELIEF**

20 **VIOLATIONS OF THE FDCPA 15 U.S.C. §§ 1692e (5), (10) and (11)**
21 **BROUGHT BY PLAINTIFF INDIVIDUALLY AND**
22 **ON BEHALF OF CLASS NUMBER ONE**

23 21. PLAINTIFF repeats, re-alleges, and incorporates by reference, paragraphs 1
24 through 20 inclusive, above.

25 22. The FDCPA prohibits a debt collector from using "any false, deceptive, or
26 misleading representation or means in connection with the collection of any debt", including but
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1 not limited to, “[t]he threat to take any action that cannot legally be taken or that is not intended
2 to be taken”. 15 U.S.C. § 1692e(5).

3 23. The FDCPA also prohibits the “use of any false representation or deceptive
4 means to collect or attempt to collect any debt”. 15 U.S.C. § 1692e(10).

5 24. Finally, a debt collector is required to disclose in the initial communication” that
6 the debt collector is attempting to collect a debt and that any information obtained will be used
7 for that purpose” and in subsequent communications “that the communication is from a debt
8 collector”. 15 U.S.C. §1692e(11).

9 25. DEFENDANT’s agent, Jim Neal, failed to notify PLAINTIFF that the call was
10 from a debt collector in relation to the collection of a debt and that any information obtained
11 would be used for that purpose, in order to trick PLAINTIFF into returning the call.

12 26. DEFENDANT falsely represented that it was going to serve PLAINTIFF with a
13 certified notice of pending litigation when it had no true intention of doing so.

14 27. DEFENDANT also falsely represented litigation was imminent against
15 PLAINTIFF when DEFENDANT had no intention of filing a lawsuit and, as of the filing of this
16 complaint, in fact closed PLAINTIFF’s file.

17 28. As a result of the FDCPA violations by DEFENDANT, PLAINTIFF has suffered
18 actual damages to be shown specifically at the time of trial, and is entitled to an award of
19 statutory damages.

20 29. It has been necessary for PLAINTIFF to obtain the services of an attorney to
21 pursue this claim and PLAINTIFF is entitled to recover reasonable attorneys’ fees therefor.
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SECOND CLAIM FOR RELIEF

**VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
AGAINST DEFENDANT BY PLAINTIFF INDIVIDUALLY AND ON BEHALF OF
CLASS NUMBER TWO**

30. PLAINTIFF repeats, re-alleges, and incorporates by reference, paragraphs 1 through 29 inclusive, above.

31. PLAINTIFF'S Consumer Fraud claim is based on NRS 41.600 for violations of NRS Chapter 598.

32. At all times herein DEFENDANT was subject to the provisions of the Nevada Deceptive Trade Practices Act; NRS 598.

33. Pursuant to NRS 598.0923: "A person engages in a 'deceptive trade practice' when in the course of his business or occupation he knowingly: 1. Conducts the business or occupation without all required state, county or city licenses. ..."

34. Pursuant to NRS 649.075, as a collection agency operating in Nevada, DEFENDANT was and is required to obtain a license to operate as a collection agency, issued by the Nevada Department of Financial Institutions.

35. Pursuant to NRS 649.075, and pleaded in the alternative, as collection agency operating from outside Nevada, but collecting debt from Nevada residents, DEFENDANT was and is required to obtain a certificate of registration as a foreign collection agency with the Nevada Department of Financial Institutions.

36. DEFENDANT is not currently, and at all material times was not licensed as a collection agency in Nevada and has not registered as a foreign collection agency in Nevada and, as a result, DEFENDANT has violated the Nevada Deceptive Trade Practices Act.

37. DEFENDANT is subject to liability for damages, as well as PLAINTIFF'S attorney fees and costs pursuant to NRS 41.600 for violations of the Nevada Deceptive Trade

1 Practices Act and PLAINTIFF and the class members are entitled to damages as set forth in the
2 Prayer for Relief herein.

3 **DEMAND FOR JURY TRIAL**

4 30. Please take notice that PLAINTIFF demands trial by jury in this action.
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6 **PRAYER FOR RELIEF**

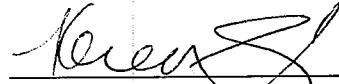
7 WHEREFORE, PLAINTIFF respectfully prays that this Court grant the following relief
8 in PLAINTIFF'S favor, and on behalf of the class, and that judgment be entered against
9 DEFENDANT for the following:
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- 11 (1) For actual damages incurred by PLAINTIFF pursuant to 15 U.S.C. §
12 1692k(a)(1);
- 13 (2) For statutory damages awarded to PLAINTIFF, not to exceed \$1000, pursuant to
14 15 U.S.C. § 1692k(a)(2)(A);
- 15 (3) For statutory damages awarded to the Class Members, pursuant to 15 U.S.C. §
16 1692k(a)(2)(B), of the amount not to exceed the lesser of \$500,000.000 or 1 per
17 centum (1%) of the net worth of the DEFENDANT;
- 18 (4) For disgorgement of all of Defendant's profits obtained through use of the script at
19 issue;
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- 21 (5) For reasonable attorney fees for all services performed by counsel in connection
22 with the prosecution of these claims;
- 23 (6) For reimbursement for all costs and expenses incurred in connection with the
24 prosecution of these claims;
- 25 (7) For such additional damages as are allowed pursuant to the Nevada Deceptive
26 Trade Practices Act for Class Number Two, including punitive damages; and
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1 (8) For any and all other relief this Court may deem appropriate.

2 DATED this 12th day of November 2013.

3 **THE BOURASSA LAW GROUP, LLC**

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